

No. 2511

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United States  
**Circuit Court of Appeals**

For the Ninth Circuit.

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JAS. F. FINDLAY, T. CLIVE DAVIES and  
W. H. BAIRD,

Plaintiffs in Error.

v.

UNITED STATES OF AMERICA,

Defendant in Error.

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**PETITION FOR RE-HEARING**

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Upon Writ of Error to the United States District Court of  
the Territory of Hawaii.

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HENRY HOLMES,  
CLARENCE H. OLSON,  
Attorneys for Plaintiffs in Error,  
Petitioners.

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## PETITION FOR RE-HEARING

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Come now James F. Findlay, T. Clive Davies and W. H. Baird, the plaintiffs in error in the above entitled cause and respectfully petition this Honorable Court for a re-hearing of said cause for the following reasons, to-wit:

1. Because this Honorable Court in its decision in said cause held that the evidence of the negotiations and proceedings leading up to the giving of the bond upon which suit was brought in said cause was admissible upon the trial of said cause for the purpose of interpreting the sense in which the par-



ties to said bond understood the terms thereof and that there was no error committed in the admission of the same as evidence in said cause, whereas the terms of the said bond are clear and unambiguous and therefore the admission of the said evidence was in violation of the parol evidence rule.

2. Because this Honorable Court in its decision in said cause held that the evidence of the subsequent proceedings in presenting the facts contemplated by said bond, to the Department of Commerce and Labor was admissible upon the trial of said cause on the ground that it was a question for the trial court to decide whether the facts had been presented to the Department as provided in said bond, whereas neither the pleadings nor the issues in said cause involved any question concerning the presentation of facts to said Department, and further because the said evidence was actually and in fact relied upon by the trial court for the purpose of construing the said bond, whereas the terms of said bond are clear and unambiguous and therefore the admission of said evidence for the purpose of construing said bond was in violation of the parol evidence rule, and furthermore the same was relied upon by the trial court as a construction of the terms of the said bond by the parties thereto, whereas it does not appear that the plaintiffs in error or any of them had knowledge or are chargeable with notice of the matters so presented by the defendant in error to the said Department.

3. Because this Honorable Court in its decision in said cause held that the said bond was valid as a common law obligation on the ground that the Secretary of Commerce and Labor had jurisdiction in the exercise of his supervisory and revisory authority over the action of his subordinates to inquire and determine whether in his opinion the penalties of the statute had been incurred by said plaintiff in error James F. Findlay, and if they had been incurred, to direct proceedings in Court to be

taken for their recovery, whereas the condition and the only condition of the said bond provided for the payment of such amount as the said Department should determine the principal thereof was liable for on account of such penalties, and therefore by the terms thereof the said principal was excluded from and deprived of any defense in a court of law; that is to say, by its decision this Honorable Court while holding that the Secretary of Commerce and Labor had no authority to determine the amount of said penalties as a judicial question, held that the said bond contemplated a preliminary but not final determination of the said penalties for the purpose of prosecution, whereas the only condition of the said bond was the payment of the amount determined by the Secretary, thus depriving said plaintiff in error of any day in Court.

And your petitioners, said plaintiffs in error, therefore pray that an order be made for a rehearing of the said cause on a day to be appointed by this Honorable Court and upon such points as this Honorable Court may direct.

JAMES F. FINDLAY,

T. CLIVE DAVIES, and

W. H. BAIRD,

said Plaintiffs in Error.

By HENRY HOLMES,

CLARENCE H. OLSON,

their attorneys.

## CERTIFICATE.

I, CLARENCE H. OLSON, one of the attorneys for the above named petitioners and plaintiffs in error, hereby certify that in my judgment the foregoing petition is well founded and that it is not interposed for the purpose of delay.

CLARENCE H. OLSON.